

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAVID RUSSELL HART,

Plaintiff,

CIV S-04-2497 DFL PAN PS

v.

ORDER

COMMISSIONER OF INTERNAL REVENUE  
SERVICE,

Defendant.

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On August 20, 2004, petitioner paid the filing fee and filed in this court's Fresno division a "Plea in Abatement" by Special Appearance, Notice and Demand to Dismiss for Lack of Jurisdiction."

On November 23, a scheduling conference was held before the Honorable Dennis L. Beck. On November 24, Judge Beck issued an order transferring this action to the Sacramento division as the "more appropriate venue" based on plaintiff's Truckee

1 residence (plaintiff stated he had filed in the Fresno division  
2 because he sends his tax returns to a Fresno address). In the  
3 same order, Judge Beck directed plaintiff to file an amended  
4 complaint within 60 days and to complete service of process upon  
5 defendant 45 days thereafter.

6 The case was transferred to this court on November 29,  
7 2004, and on December 3, the Clerk of Court issued this court's  
8 "Order Requiring Timely Service and Joint Status Report."

9 On January 26, 2005, plaintiff timely filed an amended  
10 complaint entitled "'Complaint' Amended, Plea for Discovery  
11 Motion to Suppress Evidence and Demand to Dismiss for Lack of  
12 Jurisdiction by Special Appearance."

13 However, plaintiff has not demonstrated completion of  
14 service of process upon defendant within either the 45-day period  
15 accorded by Judge Beck's order (March 15, 2005), or the 120  
16 period accorded by this court's December 3 order (June 1, 2005).<sup>1</sup>

17 Service of process upon the United States and its  
18 agencies is governed by Fed. R. Civ. P. (i), which provides:  
19 "(1) Service of process upon the United States shall be effected  
20 (A) by delivering a copy of the summons and of the complaint to  
21 the United States attorney for the district in which the action  
22 is brought . . . or by sending a copy of the summons and of the  
23 complaint by registered or certified mail addressed to the civil  
24 process clerk at the office of the United States attorney and

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25  
26 <sup>1</sup> These periods include an additional three days for service of the  
respective orders pursuant to Fed. R. Civ. P. 6(e).

1 (B) by also sending a copy of the summons and of the complaint by  
2 registered or certified mail to the Attorney General of the  
3 United States at Washington, District of Columbia, and . . .

4 (2) (A) Service on an agency or corporation of the United States,  
5 or an officer or employee of the United States sued only in an  
6 official capacity, is effected by serving the United States in  
7 the manner prescribed by Rule 4(I)(1) and by also sending a copy  
8 of the summons and complaint by registered or certified mail to  
9 the officer, employee, agency, or corporation."

10 In order to comply with Rule 4(i), plaintiff is directed  
11 to send by certified or registered mail a copy of the summons and  
12 complaint to each of the following:

13 Mark W. Everson, Commissioner  
Internal Revenue Service  
14 U.S. Department of the Treasury  
15 1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

16 McGregor W. Scott  
United States Attorney  
17 Eastern District of California  
c/o Civil Process Clerk  
18 501 I Street, Suite 10-100  
Sacramento, CA 95814-2322

19 Alberto Gonzalez  
20 Attorney General  
U.S. Department of Justice  
21 950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

22  
23 Plaintiff is directed to file proof of such service by  
24 July 20, 2005. Failure to comply with this order will result in

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1 a recommendation this action be dismissed pursuant to Fed. R.  
2 Civ. P. 4(m) and Fed. R. Civ. P. 41(b).

3 So ordered.

4 Dated: July 6, 2005.

5 /s/ Peter A. Nowinski

6 PETER A. NOWINSKI  
Magistrate Judge